

Message

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Subject: OPPT/OPP/OCSPP Clips, 4/26/2019

OPPT/OPP/OCSPP Clips

April 26, 2019

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LEAD

Curbed: New York

In East Village, onslaught of buildings contaminated by noxious lead dust continues

<https://ny.curbed.com/2019/4/26/18514936/in-east-village-onslaught-of-buildings-contaminated-by-noxious-lead-dust-continues>

Caroline Splvack

Friday, April 26, 2019

An East Village apartment building owned by a Hollywood accountant tested for abnormally high levels of lead, after renovations caused dust to coat spaces throughout the six-story building—exposing tenants, including a two-year-old child, to the noxious metal.

In March, a Department of Health and Mental Hygiene (DOHMH)-commissioned report obtained by the Cooper Square Committee, a tenants' rights group, found elevated lead levels in 13 of 17 samples swabbed at 332 East Fourth Street. The report, dated March 19, showed elevated lead levels in the building's vestibule, hallways, and staircases, with one sample taken from the tiled-floor of a hallway testing for 214 micrograms of lead per square foot—the U.S. Environmental Protection Agency's standard is 39 micrograms per square foot. A spokesperson from DOHMH also confirmed that 13 of the samples contained lead over EPA standards and a referral was made to the agency.

The case is the latest example of the city's struggle to crack down on private landlords who expose their tenants to lead during renovations, despite the de Blasio administration's concerted campaign against lead poisoning, and the City Council passing bills to strengthen lead laws. The problem has bedeviled buildings in the East Village and Lower East Side with infamous landlords including Steve Croman, Samy Mahfar, and Raphael Toledano unleashing hazardous dust on their tenants during renovations—a tactic often used to push out rent-regulated residents.

"This has become all too familiar in this community," City Council member Carlina Rivera, who represents the two lower Manhattan neighborhoods, said at a Wednesday protest outside of the Fourth Street building. "We have wrote the laws, we have passed the laws, what we're lacking right now is to enforce the laws. Whether it's about lead, whether it's about construction as harassment in general, it's unforgivable that landlords continue to get away with this."

The 28-unit rent-stabilized building sold in January for \$14 million to Frontier Fourth Development LP listed at the address of accounting firm Bell and Company—with clients including A-list filmmaker Steven Soderbergh, conservative pundit Bill O'Reilly, and basketball hall of famer Marv Albert—according to city property records. In February, tenants said the managing partner of the company, Evan Bell, introduced himself as the property's new owner. He is also listed as the parcel's owner in Department of Buildings records.

It wasn't long before plans to renovate the building were filed with the city, including initial work to overhaul two apartments on the sixth floor. But when construction began in March, Theresa Kimm—who lives in the building with her two-year-old daughter—noticed a "fine coat of white dust in the staircase" after observing construction workers dragging out debris without protective gear. Worried about the health implications, tenants called the city. Test results for abnormally high lead levels came back for surfaces on each of the building's six stories, according to the March report by Atlas Environmental Laboratory on behalf of the city.

Bell told Curbed in an email "we regret" the lead dust contamination and said a worker was hired to clean the building's hallways and staircases, and that an independent company was brought in to test for lead and "found NO lead dust in the halls" and in a separate apartment.

"We are renovating [and] working very hard to protect tenants [and] improve a property that is over 100 years old [and] that has had no improvement for decades ... We desire to provide quality housing [with] quality systems to as many people as we can," Bell wrote in an email. "That is impossible [without] some construction [and] the mess that it provides."

Department of Buildings (DOB) inspectors also visited the property the same day samples were collected and hit the property with a full stop-work order after discovering that renovation work in one of the building's apartments "did not conform with the approved plans for the job," according to DOB spokesperson Andrew Rudansky. An apartment, for instance, had undergone a complete gut demolition, rather than a partial renovation, and the Tenant Protection Plan and Safe Construction Bill of Rights, which are required by law, were not properly posted in public areas of the building or distributed to tenants. Three March violations were issued that have since been resolved, and the city has partially lifted the stop-work order so permits could be pulled to correct issues, according to Rudansky.

"DOB will continue to closely monitor the ongoing construction work at the property in order to protect the safety of tenants, workers and the public," said Rudansky.

Fed-up tenants vented their frustrations about the crude construction at Wednesday's protest. "Since Evan Bell purchased our building he has put at risk the most basic of tenant expectations, notably to live in a safe, contamination-free environment," said Mark Roth, who has lived in a two-bedroom apartment there for 22 years. "Evan Bell's rights and prerogatives do not extend to the endangerment of our health, both physical and mental."

Kimm, who has lived in her two-bedroom apartment for nine years, said that the episode made her wonder if her apartment that had not been painted in several years contained lead. She bought a home lead test and tested her daughter's room. She was horrified to discover that paint chips from the wall—which was there long before Bell began operating the property—tested positive for lead and called the city for help on steps to remediate.

"I've spent sleepless nights working, calculating the numbers, 'Where can we move? How much more can we afford to pay?'" Kimm said at the rally. "These days my moods fluctuate between anxiety, guilt, anger, and sometimes even despair and hopelessness."

On April 5, officials with DOHMH issued an order requiring "clean-up, safe work practices, and submission of clearance dust wipe sampling results after final clean-up" to the landlord. In the latest inspection by DOHMH on April 19, health officials observed no dust at the time, according to a spokesperson with the health department.

Exposure to the heavy metal can have severe consequences. In those six years old and younger, it can cause behavior and learning problems, slowed growth, anemia, and hearing issues. Lead in adults has been known to cause decreased kidney function, increased blood pressure, and reproductive problems in men and women, according to the EPA.

Laws already on the books, including Local Law 1 passed in 2004, are meant to ensure health and safety measures are taken to protect tenants. That law in particular requires landlords to find out if any children younger than six years old live in a building and inspect those apartments for lead paint hazards annually. And Lawmakers are working to enact tougher laws. The City Council introduced a new package of bills last spring aimed at eliminating lead poisoning across the boroughs—it would be the biggest overhaul of city lead laws since 2004. But oftentimes, such laws are not enforced until tenants have already suffered exposure, said one legal expert.

"The fundamental issue remains why is it the administration refuses to get serious about enforcing this? There are laws on the books that should have prevented this from happening," said Matthew Chachère, an expert on lead laws and an attorney with the Northern Manhattan Improvement Corp., referring to lead exposure at 332 East Fourth Street.

In January, the de Blasio administration unveiled a new initiative aimed at eliminating childhood lead exposure and says it will police private landlords. But the pledge came after the city dropped the ball for years at the New York City Housing Authority, where it failed to conduct lead paint inspections required by local and federal law before officials falsified federal documents on the tests. Now, the agency is in the midst of an \$88 million effort to identify public housing apartments contaminated with lead paint using high-tech X-ray devices that can find the metal through multiple layers of paint.

“The administration really needs to step up and improve enforcement and City Council needs to hold the administration accountable now,” said Brandon Kielbasa, the director of organizing and policy with the Cooper Square Committee. “People should not run the risk of irrevocable developmental disabilities and other health problems because a landlord doesn’t want to slow down and do the process the right way.”

PFAS/WATER

People

EPA Slammed for Suggesting Weakened Standards to Clean Up Contaminated Drinking Water

<https://people.com/human-interest/epa-proposes-weakened-standards-contaminated-drinking-water/>

Diane Herbst

Friday, April 26, 2019

The Environmental Protection Agency has proposed to weaken standards for cleaning up toxic chemicals used at military bases and found to have contaminated drinking water that millions of Americans consume, bowing from pressure from the Department of Defense, according to a report in the New York Times.

The toxic chemicals, called PFAS (per- and polyfluoroalkyl substances), may pose health risks, including cancer, liver damage, decreased fertility and increased risk of asthma and thyroid disease, according to the Harvard T.H. Chan School of Public Health.

PFAS have been used for decades in “non-stick cookware, water-repellent clothing, stain-resistant fabrics and carpets, some cosmetics, some firefighting foams, and products that resist grease, water, and oil,” according to the Centers for Disease Control and Prevention.

The Defense Department has used significant amounts of PFAS-related chemicals in its firefighting, and has confirmed the toxic chemicals’ release or possible release at 401 locations across the country, the Times reports, citing a U.S. Government Accountability Office (GAO) report.

The EPA had set water contamination cleanup standards in the last year, including a suggestion that could have led to prompt removal of the toxic chemicals, but the Pentagon objected and brought concerns to the White House, reports the Times.

The suggestion has been erased from the current proposal, according to the newspaper. Instead, the current recommendations focus on remedial actions that can take years to clean up contaminated drinking water, and some sites that would have been required to clean up contaminated water may now avoid remediation, according to the publication.

The proposed weakened standards are open for public comment.

David Andrews, a senior scientist at the Environmental Working Group, called the EPA’s proposal a “woefully inadequate response” to the public health threat posed by widespread contaminated groundwater that’s been discovered in 33 states and affects some 10 million in the U.S., reports the Times.

“It is a Band-Aid, at best, that does essentially nothing to help the hundreds — perhaps thousands — of communities, in almost every state, with contaminated tap water,” he told the Times. “Americans need real and swift action to address this crisis, not more toothless proposals from the Trump administration.”

EPA spokesperson Corry Schiermeyer tells PEOPLE in an email that the the proposed changes to the standards do not mean that the agency would drop its responsibility to protect public health. “The criticisms are wrong, this draft is not a regulation and is not weak,” Schiermeyer writes.

“This is a critical tool for our state, tribal, and local partners to use to address these chemicals,” Schiermeyer writes. “Our draft guidance is the FIRST time the EPA has ever released guidelines for addressing or cleaning up groundwater contaminated by PFOA/PFOS and represents an important step under our PFAS Action Plan.”

Sen. Tom Carper of Delaware, the top Democrat on the Senate Environment and Public Works Committee, said in a statement that the EPA’s guidance “fails to adequately protect public health from this emerging crisis.”

“[EPA] Administrator Wheeler said that safe drinking water is the greatest environmental challenge facing our world,” Carper said, “yet, again, we see that EPA is not addressing this issue in the manner in which it demands, nor with the urgency in which Americans deserve.”

The New York Times

E.P.A. Proposes Weaker Standards on Chemicals Contaminating Drinking Water

<https://www.nytimes.com/2019/04/25/us/epa-chemical-standards-water.html>

Eric Lipton and Julie Turkewitz

Thursday, April 25, 2019

WASHINGTON — After pressure from the Defense Department, the Environmental Protection Agency significantly weakened a proposed standard for cleaning up groundwater pollution caused by toxic chemicals that contaminate drinking water consumed by millions of Americans and that have been commonly used at military bases.

Standards released by the agency on Thursday eliminated entirely a section that would have addressed how it would respond to what it has described as “immediate threats posed by hazardous waste sites.” Those short-term responses, known as removal actions, can include excavating contaminated soil or building a security fence around a toxic area.

Exposure to the class of toxic chemicals, called per-and polyfluoroalkyl substances, has been linked in recent years to kidney cancer, testicular cancer, thyroid disease, high cholesterol and ulcerative colitis, among other diseases. Animal studies also show delays in development.

For decades, the substances, more commonly known as PFAS, have been placed in all kinds of everyday products — nonstick pans, clothing, furniture. They can also be found in firefighting foams used on military bases, on airfields and by municipal firefighters.

The proposed guidelines — which will now be open for 45 days of public comment before they are completed — could have the largest effect on the Defense Department. The Pentagon has used PFAS-related chemicals extensively as a firefighting tool, and it has confirmed the release or the possible release of the chemicals at 401 locations nationwide, in some cases contaminating known drinking water supplies.

Over the past year, the Pentagon objected to language the E.P.A. had proposed to set these so-called cleanup standards, bringing those concerns to the White House, which coordinates the review of major regulatory proposals.

In the proposal, the E.P.A. had suggested a water contamination level that could incite immediate removal action. That level was 400 parts per trillion of two types of PFAS, a copy of the original proposal shows. That suggestion is now gone.

The recommendations issued Thursday focus instead on longer-term remedial actions — which can take years — to address instances in which the government has confirmed that drinking water supplies have been contaminated.

In those cases, the agency said it expected cleanup or other actions in areas where drinking water supplies have been contaminated with at least 70 parts per trillion of the chemicals. A different threshold could potentially allow many sites that would have faced cleanup requirements based on its original proposal to avoid such efforts.

The proposal also suggests that when water tests for PFAS at 40 parts per trillion, officials should open a larger investigation to evaluate the spread of the chemicals and find responsible parties.

But the agency does not explicitly ask polluters to take action in areas around the United States where polluted water is not being used as drinking water.

The guidelines immediately drew criticism from Senator Thomas R. Carper of Delaware, the top Senate Democrat who helps oversee the E.P.A., and from environmentalists and health advocates who have urged the agency to aggressively confront the issue.

A senior scientist at the Environmental Working Group, David Andrews, criticized the guidelines as a “woefully inadequate response” to what has been widely called one of the most pressing public health threats in the United States. The groundwater contamination has turned up in at least 33 states and affects an estimated 10 million Americans.

“It is a Band-Aid, at best, that does essentially nothing to help the hundreds — perhaps thousands — of communities, in almost every state, with contaminated tap water,” he said. “Americans need real and swift action to address this crisis, not more toothless proposals from the Trump administration.”

An E.P.A. spokesman said it was incorrect to assert that the changes in the proposed guidelines meant that the agency would not advocate immediate steps to protect public health when such actions were warranted.

“E.P.A. has worked and will continue to work with state, tribal, and local governments to protect the public health,” said the spokesman, John Konkus.

For months, people living in communities with contaminated groundwater have asked the E.P.A. to push for cleanup, concerned that groundwater will eventually become drinking water.

Those places include cities and towns near Peterson Air Force Base in Colorado; the former Pease Air Force Base in New Hampshire; Stewart Air National Guard Base in New York; Wright-Patterson Air Force Base in Ohio; and Cannon Air Force Base in New Mexico.

Oscoda, Mich., home to the former Wurtsmith Air Force Base, is among the towns with extensive PFAS contamination in its groundwater.

In an interview, Aaron Weed, the town supervisor and a 22-year veteran of the Air Force, said the guidelines gave him little hope that the Defense Department would move quickly to address cleanup.

“I think the Air Force, who says that people are their No. 1 resources, aren’t putting their money where their mouth is,” he said, “and they are letting the citizens of their country suffer from their lack of desire to fix the problem.”

Roll Call

EPA draft groundwater rules disappoint clean water advocates

<https://www.rollcall.com/news/policy/epas-draft-groundwater-rules-disappoint-clean-water-advocates>

Jacob Holzman

Friday, April 26, 2019

The Environmental Protection Agency proposed draft cleanup standards Thursday for groundwater contaminated by so-called forever chemicals, but advocates who urged the adoption of such standards said they were too weak.

The proposal addresses PFAS compounds, which are so slow to degrade they’ve been nicknamed forever chemicals.

The compounds, per- and polyfluoroalkyl, were used for decades in manufacturing products such as cookware, microwave popcorn bags, carpeting, rainwear and fire retardants because they make surfaces resistant to heat, water and staining. They’re also included in some firefighting foam used by the military.

Tougher standards previously reported to be in the draft, including the designation of levels that would trigger the distribution of bottled water in communities served by tainted water sources, were not in the interim recommendations released for public comment.

The proposed recommendations did include a provision asserting “responsible parties will address” contamination of groundwater that could become a drinking water source. Critics quickly cited that as evidence polluters may not be required to clean up all contamination.

If adopted, the recommendations would urge federal agencies with jurisdiction over known or potential drinking water sites to clean up contamination to concentrations lower than 70 parts per trillion of two PFAS chemicals.

But the exclusion of an emergency cleanup level, which would have required the distribution of bottled water, may lead to additional scrutiny of whether the Defense Department, which is said to be opposed to such a specification, may have played a role in their absence in the proposal.

Repeatedly taking aim at the Pentagon, Senate Environment and Public Works ranking member Thomas R. Carper said in a news release the guidance “fails to adequately protect public health from this emerging crisis.”

“[EPA] Administrator Wheeler said that safe drinking water is the greatest environmental challenge facing our world, yet, again, we see that EPA is not addressing this issue in the manner in which it demands, nor with the urgency in which Americans deserve,” the Delaware Democrat said.

Water Online

EPA Asserts Position On Clean Water Act, Groundwater Discharge Oversight

<https://www.wateronline.com/doc/epa-asserts-position-on-clean-water-act-groundwater-discharge-oversight-0001>

Peter Chawaga

Friday, April 26, 2019

According to a recent interpretation of the Clean Water Act, the U.S. EPA won’t regulate pollution that occurs in surface water if it passes through groundwater first.

While the Clean Water Act unambiguously requires the EPA to oversee pollution to surface waters, and requires permits for operations that discharge to them, the agency released a statement this month clarifying that the same is not true for pollution that winds up in surface water if it travels through groundwater first.

“The Environmental Protection Agency (‘EPA’) is issuing an Interpretative Statement addressing whether the Clean Water Act (‘the CWA’ or ‘the Act’) National Pollutant Discharge Elimination System (‘NPDES’) permit program applies to release of a pollutant from a point source to groundwater,” according to the statement. “The Agency concludes that the CWA is best read as excluding all releases of pollutants from a point source to groundwater from NPDES program coverage, regardless of a hydrologic connection between the groundwater and jurisdictional surface water.”

This interpretation, which may conflict with an interpretation of the rule that the EPA and the U.S. Department of Justice made in 2016, could have major implications for operations that discharge wastewater and, later on in the water system, for drinking water treatment operations.

“That could affect regulation of pollution from a variety of sources, including seepage from coal ash and manure management ponds, sewage collection systems, septic system discharges, and accidental spills and releases,” according to E&E News.

It remains to be seen exactly how the EPA will enforce the CWA under its latest interpretation, but environmental groups are already worried that this will grant new leniency to operations that discharge into groundwater and ultimately pollute surface water.

“Environmental groups acknowledge that the landmark environmental law does not regulate groundwater itself but say that’s not the same as allowing pollution to reach surface water if it travels through groundwater,” per E&E News. “They have argued in favor of regulating surface water pollution when it can be directly traced back to a point source, regardless of whether it first traveled through groundwater.”

Ultimately, the guidance will not be applied until after the U.S. Supreme Court hears a case regarding the 2016 interpretation of the Clean Water Act — at least in the jurisdictions that ruling affects. Depending on how the Supreme Court rules, EPA’s interpretation may move forward or be adjusted once again.

“The U.S. Supreme Court said earlier this year that it will hear a case this fall that involves pollution of groundwater that is hydrologically connected to regulated surface waters,” according to Circle of Blue. “Federal circuit courts have issued contradictory opinions on the question. Due to those opinions, the agency will wait until the Supreme Court issues a ruling before it applies the guidance to states that are under the Fourth and Ninth circuit court jurisdiction.”

TOXICS

Bloomberg Environment

Chemical Rule Sent Back to EPA on Trade Secret Concerns (2)

<https://news.bloombergenvironment.com/environment-and-energy/chemical-rule-sent-back-to-epa-on-reverse-engineering-concerns>

Pat Rizzuto

Friday, April 26, 2019

- D.C. Circuit requires EPA rewrite on part of chemical inventory rule
- EPA failed to require firms submit proof they’ve protected their chemicals from discovery

An EPA rule failed to require chemical manufacturers to sufficiently prove that they’ve protected their chemical’s secret identity from discovery through reverse engineering, a federal court ruled April 26.

Nor did the Environmental Protection Agency explain why it eliminated from a final rule (RIN 2070-AK24), all of the questions the agency’s proposed rule had included that pertained to reverse engineering, the U.S. Court of Appeals for the District of Columbia Circuit said.

Reverse engineering refers to analytical procedures that scientists can use to figure out materials a chemical is made from, how it is manufactured, and how its atoms are arranged.

The court sent the rule back to the EPA without vacating it.

That means the 2017 rule, which established the procedures chemical manufacturers and processors had to use to let the agency know which chemicals they made or used, remains in effect, said Eric P. Gotting, a partner in the Washington office of Keller and Heckman LLP.

Inventory Not Affected

The agency used the information companies submitted to release earlier this year an official inventory of chemicals active in commerce. That inventory isn’t affected by the court’s decision.

The court upheld all other parts of the EPA’s rule that the Environmental Defense Fund challenged.

“This decision is a significant win for public disclosure and a strong affirmation by the court of the public’s right to know about the chemicals to which we all are or may be exposed,” Robert Stockman, the EDF attorney who argued the case, told Bloomberg Environment.

“EPA will now have to require significantly more evidence from companies before they can conceal the identities of chemicals they make and sell,” Stockman said. “As a result, fewer such claims will be allowed and workers, consumers, and the public will gain access to more information about those chemicals.”

Scrapped All Questions

Judge Patricia A. Millett said, writing for a three-judge panel, wrote, “The EPA scrapped, among other things, all substantiation questions related to the requirement that a substance’s chemical identity not be susceptible to reverse engineering.”

The omission ran afoul of the Toxic Substances Control Act, she said.

The law required manufacturers to assert and substantiate that they had a “reasonable basis to believe that the information is not readily discoverable through reverse engineering.”

TSCA does not accept at face value a company’s assertion that it has protected its chemical from discovery, Millet wrote.

“Quite the opposite, the statute specifically requires the company to ‘substantiate’ its confidentiality claim,” she said.

EPA Reviewing

The agency is reviewing the court’s decision and will then determine next steps, the agency said by email.

The American Chemistry Council, “is pleased that the D.C. Circuit denied the majority of the challenges in the case, which is a clear sign that EPA’s approach is consistent with the statute and congressional intent,” Allison Starmann, the trade group’s deputy general counsel, said in a statement.

The council is among 14 industry trade groups that intervened in the case supporting the EPA.

The requirement for companies to substantiate their claims that they have taken steps to prevent their chemicals’ discovery through reverse engineering seems appropriate, said Lynn L. Bergeson, managing partner of Bergeson & Campbell PC.

“The requirement is statutory and EPA’s excision exercise was overzealous. Absent a coherent explanation why it did what it did, understandably the court determined EPA crossed the line between reasonable and arbitrary,” Bergeson said.

“The remand is narrow, however, and EPA won a big victory,” Bergeson said.

Next Steps: Two Options

The court’s decision essentially gives the EPA two choices, said Herbert Estreicher, who also is a partner in the Washington office of Keller and Heckman.

First, the agency could propose a rule that explains why it didn’t need to ask companies about how they protected their chemicals’ identities from being discovered through reverse engineering, he said.

It also could require companies to demonstrate the actions they’ve taking to protect their chemicals as part of another rule the agency is developing, Estreicher said.

He referred to a rule (RIN 2070-AK21) the EPA proposed April 23 describing the procedures chemical manufacturers would have to follow when they ask the agency to keep the identity of chemicals they make confidential.

If the EPA chooses the second option, which Estreicher said is more likely, the agency will need to publish a supplement to the proposal rule it already issued.

That supplement would propose to include reverse engineering as one of the substantiation questions companies must answer, he said.

Also on the panel were Chief Judge Merrick B. Garland and Judge Harry T. Edwards.

The case is *Env'tl. Def. Fund v EPA*, D.C. Cir., No. 17-1201, 4/26/19.

(Updated with additional information and comments throughout.)

E&E News

Uncertainty reigns as EPA rethinks toxics rule's legal base

<https://www.eenews.net/greenwire/2019/04/26/stories/1060223767>

Sean Reilly

Friday, April 26, 2019

Even as they target the legal foundation for Obama-era regulations on power plant mercury emissions, EPA leaders have been firm on one point: The actual emissions limits on the toxic metal would stay in place.

The nation's top coal company holds a different view.

There is "the very real possibility that EPA will withdraw MATS entirely, or at least significantly reform the rule to reduce its ongoing O&M [operations and maintenance] cost burden," Michael Nasi, a lawyer for Peabody Energy Corp., wrote in February testimony in a rate case before the Indiana Utility Regulatory Commission.

MATS is an abbreviation for Mercury and Air Toxics Standards, the formal name for the 2012 regulations. Neither Nasi nor Peabody spokeswomen replied to phone and email messages this week asking whether the company has received indications from EPA that a broader rollback is in the cards. EPA press aides also did not respond to a request for comment.

If nothing else, Nasi's assertion underscores the haze of uncertainty enveloping the Trump administration's decision to reopen one of the most far-reaching air rules in the agency's history.

A leading utility trade group, for example, has seized on his testimony as evidence that its members' ability to recoup the hefty sums spent on MATS compliance could be in peril. In the rate case, Peabody contends that Northern Indiana Public Service Co. (NIPSCO) "should not be allowed to continue to recover costs" from ratepayers for MATS pollution controls and their continued operation, the Edison Electric Institute said in comments filed last week on the EPA proposal.

Peabody is contesting NIPSCO's plan to shutter two coal-fired power plants, in part by arguing that the company shouldn't be permitted to assume that continued spending will be needed to meet the mercury standards and other federal environmental regulations.

Peabody's gambit so far appears to be unique. There's no assurance that the Fortune 500 firm will get its way. But such challenges could engender "expense and uncertainty" that would significantly harm EEI members "engaged in active regulatory proceedings," the institute said.

Its comments were among a flurry filed by an April 17 deadline for public feedback on the draft rule released just after Christmas. Under that proposal, EPA would revoke the legally required determination, first made almost 20 years ago, that it is "appropriate and necessary" to regulate releases of mercury, arsenic and other hazardous air pollutants from coal- and oil-fired plants.

The agency maintains the reversal is warranted because the costs of meeting the mercury standards "grossly outweigh" the quantifiable health savings directly tied to cuts in those pollutants. While the Obama administration's analysis had also factored in billions of dollars' worth of additional "co-benefits" stemming from expected reductions in airborne particulates, the new proposal deems that approach flawed.

Although EPA is also seeking comment on the option of scrapping MATS entirely, "we believe that every piece of mercury control equipment that is installed on a power plant today will remain under our proposal," then-acting Administrator Andrew Wheeler told lawmakers in January at his Senate confirmation hearing (E&E News PM, Jan. 16).

But if EPA revokes the underlying "appropriate and necessary" determination, critics predict a coal industry lawsuit seeking to scuttle the mercury standards altogether won't be far behind. Fueling suspicions about EPA's ultimate intentions is Wheeler's prior work as a contract lobbyist for Murray Energy Corp., the Ohio-based coal giant.

Bob Murray, the company's CEO and a fervent ally of President Trump, unsuccessfully pressed the administration in 2017 to suspend implementation of the mercury standards. Now, if the appropriate and necessary determination is scrapped, "EPA must rescind MATS," Murray wrote in his own comments on the proposal last week.

Murray Energy is already the lead plaintiff in litigation challenging EPA's 2016 "supplemental finding" that reaffirmed the decision to regulate power plant mercury emissions after the Supreme Court faulted it for failing to consider compliance costs at the outset. Proceedings in that litigation are currently on hold; a Murray Energy spokesman failed to reply to an email this week asking whether the company intends to take direct aim at MATS if the rule's legal basis is scrubbed.

Similarly arguing that the standards must go is the Competitive Enterprise Institute, a conservative think tank that also has administration ties. "Once EPA has finalized the proposal and rescinded the MATS rule's statutory justification, it should rescind MATS itself or its standards," Senior Fellow Marlo Lewis wrote last week.

But virtually all power producers are now in compliance with the mercury standards, at a price tag EEI pegs at \$18 billion. The administration's approach has sparked a backlash from an industry that has cheered other regulatory rollbacks.

In a letter last month, the institute, along with other electricity-sector trade groups and the U.S. Chamber of Commerce, effectively urged the agency to abandon its current plan and deal with cost and benefit issues in a separate proceeding (Greenwire, March 27).

But in his February testimony, Nasi argued that power producers should be on Peabody's side. NIPSCO, for example, "ought to be encouraging EPA to repeal MATS," since the agency has sought input on that option. He also accused the industry of putting its financial self-interest ahead of ratepayers' concerns in lobbying to keep the standards intact.

"It is inappropriate for regulated utilities to engage in this type of advocacy," Nasi said, "while seeking to justify [plant] retirement decisions based on costs they could avoid but for that advocacy."

Politico Pro

Court dings EPA's TSCA inventory rule on confidentiality

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Alex Guillen

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A federal court on Friday faulted EPA for omitting some questions from a list that companies must answer to keep chemical identities "confidential" under the updated Toxic Substances Control Act.

The law requires EPA to maintain a publicly accessible inventory of all chemicals used in commerce. Most listed chemicals contain detailed information, but a portion can be classified as "confidential" and are identified only by a generic name rather than the specific chemical identity.

The 2016 update to TSCA included more stringent requirements for companies to "substantiate" their confidentiality claims, and EPA issued a rule in August 2017 to address that requirement. But EPA's regulation fell short on meeting one

part of the law, ruled a three-judge panel on the D.C. Circuit Court of Appeals in a lawsuit brought by the Environmental Defense Fund.

The judges said EPA “arbitrarily and capriciously” dropped requirements for companies to prove that confidential chemicals can’t be “reverse engineered” by studying commercially available products or facility emissions.

“The reverse-engineering aspect of the Inventory Rule comes up short,” wrote Judges Patricia Millett, Merrick Garland and Harry T. Edwards.

“It makes no sense to treat as confidential the chemical identity of a substance that can readily be discovered through reverse engineering,” the court wrote. “Yet the EPA’s Rule offers no sensible explanation at all for that gap in substantiation, nor does it even acknowledge the consequence of its omission. That error is fatal.”

The court rejected four other EDF challenges to the inventory rule.

WHAT’S NEXT: The judges remanded that portion of the rule back to EPA, but left the provision in place in the meantime.

The Hill

Critics accuse EPA of weakening pollution rule for Pentagon

<https://thehill.com/policy/energy-environment/440874-critics-accuse-epa-of-weakening-pollution-rule-for-pentagon>

Rebecca Beitsch

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Critics say an Environment Protection Agency (EPA) proposal would weaken the Pentagon's obligation to deal with harmful chemicals that pollute groundwater near military bases.

They say the proposal, released Thursday, is the result of a long military effort to weaken EPA standards on cleaning up chemical pollution.

“If reports are true that the DOD [Department of Defense] pressured the EPA to weaken PFAS cleanup standards, this is wholly unacceptable and is inconsistent with assurances that Acting [Defense] Secretary [Patrick] Shanahan gave me on the Pentagon’s commitment to address PFAS contamination,” Sen. Jeanne Shaheen (D-N.H.) wrote on Twitter. “We cannot afford to take a step backward on addressing PFAS contamination.”

The fight is over a group of nonstick chemicals typically referred to as PFAS, which are used in everything from Teflon pans and food wrappers to raincoats. But the chemicals are also a key ingredient in firefighting foam, which is used heavily on military bases and leaves the chemicals seeping into groundwater that often supplies the drinking water for nearby communities.

After decades of use, there is growing evidence of the health risk of PFAS. The substance causes various types of cancer, thyroid disease, high cholesterol and other illnesses. It’s also doesn’t break down easily--studies have found the substance in 98 percent of people’s blood.

Critics say EPA’s proposal, which will now go through a 45-day comment period, does little to address the contamination present at as many as 400 military sites. They say the rules would allow the Pentagon to take years to begin cleaning up PFAS pollution at many sites.

“They don’t compel any meaningful action at the sites already known to be polluted,” Sonya Lunder, senior toxics advisor at the Sierra Club said in a statement about the proposal.

"There are hundreds of communities contaminated by military activities and industrial emissions, and most have drunk contaminated water for decades," Lunder continued. "We do not have the luxury of waiting any longer. We need immediate action to protect women, children and communities most exposed to these dangerous chemicals."

Democratic senators expressed concern earlier this year that other agencies, including the Pentagon, might try to weaken EPA standards. In March, they wrote to a number of agency heads requesting documents on any "interagency dispute related to how stringent the guidelines should be."

Sen. Tom Carper (D-Del.), one of the signatories of the letter, said EPA's proposal "fails to adequately protect public health from this emerging crisis."

"[EPA] Administrator [Andrew] Wheeler himself said that safe drinking water is the greatest environmental challenge facing our world, yet, again, we see that EPA is not addressing this issue in the manner in which it demands, nor with the urgency in which Americans deserve."

When EPA first considered a potential rule on addressing PFAS contamination, the agency and Pentagon were far apart on what standards to implement.

EPA recommends water have no more than 70 parts per trillion (ppt) of PFAS. The Department of Defense (DOD) had argued they shouldn't be held responsible for cleanup unless those levels reach a much higher level, 380 ppt.

The difference in those numbers goes beyond the pollution level of water. Raising the threshold for cleanup would cut the number of military sites considered contaminated and save the Pentagon potentially millions on what could be a \$2 billion cleanup tab.

Though EPA's proposal would cover a greater number of sites than the military's suggested contamination level, critics say the proposal does not require immediate clean up.

Missing from the proposal is a measure that would have allowed the EPA to take emergency action on its own to clean up sites with more than 400 ppt of PFAS and later bill the government agency or entity responsible for the pollution.

Betsy Southerland, a former director of the EPA's Office of Science and Technology in the Office of Water, helped develop the 70 ppt recommendation for the agency at the tail end of the Obama administration. She said the removal of the emergency measure is "the worst thing about this guidance."

One of the biggest concerns, she said, is how long it may take for DOD to take action.

"It can take a long time to clean that up cause then it's not an emergency. You can take your time, do a lot more studies, evaluate all the different possible actions you can take to curtail the pollution," Southerland said.

"So, it can be years until communities get a response from the Department of Defense or a private party," Southerland continued. "You can just take your sweet time."

Corry Schiermeyer, an EPA spokeswoman, defended the proposal, calling it a critical tool that marks the first time the agency has taken action to address PFAS contamination of groundwater.

DOD did not respond to questions about the agency's push for different standards.

"We support the public comment process and look forward to working with EPA to implement the final guidance document," said Heather Babb, a Pentagon spokeswoman.

Congress has pressured the Pentagon to address pollution issues, including more than \$134 million in the current year's budget specifically for cleanup. This year, there are at least 13 bills that would require action on PFAS, some directed specifically at the military.

Shaheen had previously asked Shanahan, the Pentagon acting secretary, to confirm reports that the military was pushing EPA to weaken its standards on PFAS. Shanahan denied those reports in an April 10 letter to the senator.

"The department is not seeking a different or weaker cleanup standard," Shanahan wrote.

For its part, EPA has also come under fire for its own handling of PFAS.

Sen. Debbie Stabenow (D-Mich.), who has sponsored several bills dealing with PFAS, said EPA's latest proposal "is completely unacceptable and does not do enough to protect public health."

The agency has long been criticized for moving too slowly in dealing with the chemicals, particularly after states started passing their own drinking water standards for PFAS, often at a level below what the EPA currently recommends.

Southerland said the 70 ppt recommendation she helped develop in 2016 has languished at the Trump EPA--the agency announced in February it would begin the process of evaluating setting a firm standard for drinking water.

WKU-NPR

Louisville Hazardous Waste Site Still Leaking Pollution Into Ohio River

<https://www.wkyuvm.org/post/louisville-hazardous-waste-site-still-leaking-pollution-ohio-river#stream/0>

Ryan Van Velzer

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One of the oldest federally-recognized hazardous waste sites is right here in Louisville. And more than 20 years after the government declared it was no longer a top priority, the site is still contaminating groundwater flowing into the Ohio River, according to the Environmental Protection Agency.

Lees Lane Landfill began its long, sordid life as a sand and gravel quarry in southwest Louisville. Somewhere around 1948, owners got the idea to fill that big, gaping hole with other people's trash and industrial waste — about 200,000 tons worth.

Today, the garbage pile is leaching arsenic and lead into the Ohio River, according to the EPA's latest review.

A lot has been done to clean up the site. Back in the 1970's, methane and other toxic landfill gases seeped into nearby homes in Riverside Gardens, causing flash fires, cancer-causing chromium polluted groundwater and roughly 400 drums lay scattered around the banks of the Ohio River, among other problems.

The EPA said that's mostly fixed, but there's still exposed waste (mostly rusty scrap metal and tires), gases rising out of the landfill, on-site pollution... and then there's the groundwater.

Now, state and federal officials say the site currently protects both human health and the environment, including groundwater. However, the review does note the site needs "groundwater and land use controls" to protect human health in the long-term.

Only about four acres of the 112-acre landfill have a clay cap to prevent water from mixing with the waste and picking up hazardous chemicals. Lees Lane is also inside the city's 100-year floodplain and has been inundated at least twice, once in 1997 and again last year.

Typically, water in the ground beside a river ends up flowing into the river.

EPA project manager Donna Seadler said she's not certain why the EPA decided not to clean up the groundwater, but it's likely because no one is drinking the water.

"So no one is drinking the groundwater at the site. It is going to the river, but no one is drinking the groundwater," Seadler said.

While presumably no one is drinking groundwater from the landfill, approximately five million people get their drinking water from the Ohio River — including people in Louisville (though the city's intake is upriver from the site). But because that water is treated before it comes out of the faucet, Seadler said it doesn't present any health risks.

Jason Flickner, Lower Ohio River Waterkeeper director said officials often expect the massive amount of water flowing through the Ohio River to dilute the pollution.

"The pathway to the Ohio River is probably the way they actually want this to go because they don't want that pathway to extend back into the community and contaminate wells," Flickner said.

It's this philosophy that has previously led the EPA to rank the Ohio among the country's most polluted rivers, he said.

"Everything we have put into the river is affecting everybody downstream of us, and so what we need to think about is them, as well as hoping that everyone upstream of us is thinking about what they're putting in the river and sending downstream to us," he said.

The groundwater pollution at Lees Lane landfill has likely gone on for decades, since people first dumped trash in the quarry.

In 2012, wells testing groundwater at the site found levels of the cancer-causing chemical arsenic above federal limits for drinking water. At its worst, arsenic levels were 38 times federal limits. Meanwhile, the data revealed lead contamination at levels as high as 130 parts per billion.

The worst pollution is showing up in groundwater closest to the Ohio River.

"If you're showing groundwater contamination, especially in an area like this where you are getting infusion from the Ohio River, especially with the flooding we've seen over the recent years, there's a great amount of concern," Flickner said.

The pollution coming from the landfill is nothing new for the community of Riverside Gardens.

Originally built as a resort community to escape urban Louisville in the first half of the 20th century, the neighborhood has become a hotbed of environmental degradation.

Besides the landfill, neighbors battled coal ash from the Cane Run power plant (before it converted to natural gas) and cancer-causing volatile organic compounds wafting over from Rubbertown — the city's corridor of chemical plants.

Over the last few years, the Kentucky Department for Environmental Protection has collected soil and air samples around the site. Regulators have determined neighbors in Riverside Gardens are safe from the landfill's contamination so long as they don't walk onto the site, said Energy and Environment Cabinet spokesman John Mura.

"The results of these extensive analyses give a picture of a legacy site that still has contamination within the bounds of the property, but for which there is no indication of immediate or near-term exposure," Mura said in an email.

However, trespassing at the site remains a problem. The site is pretty easy to access, especially along the Louisville Loop. People are riding ATVs and dirt bikes over the old landfill, scarring the cap and increasing the chances of pollution escaping. Others roam the nearby woods camping and hunting.

That's something that hasn't thrilled any of the government agencies involved.

Metropolitan Sewer District oversees the day to day operations of the landfill. They mow, monitor gas levels, maintain signage and check to make sure the most dangerous parts of the landfill are covered, said MSD site administrator Heather Dodd.

She said the district has put up bigger barriers and fences, but that it's had mixed effectiveness.

"We have tried to put up fencing to keep people out, to limit trespassing, and that doesn't seem to be terribly effective when people cut through the fence," Dodd said.

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